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## **ARTICLE 2-4**

### **City Council**

#### **Sec. 2-4-10. Election of members and term.**

(a) The election of the Mayor and eight (8) Council members shall be governed by the Colorado Municipal Election Code, except as otherwise provided by the City Charter, or by ordinance not in conflict with the Charter.

(b) Council seats regularly expiring in accordance with this Section shall be elected to serve four-year terms. The terms of office of the Mayor and Council members shall be governed by the City Charter or by ordinance not in conflict with the Charter. (Prior code §§1-1000, 1-1001; Ord. 700, 1972; Ord. 1339 §1, 1989; Ord. 1589, 1999; Ord. 1710 §1, 2001)

#### **Sec. 2-4-13. Nomination petitions.**

The nomination petitions for any person who desires to be a candidate for Mayor or Council may be circulated and signed beginning on the ninety-first day and ending on the fifty-seventh day prior to the day of the election. (Ord. 1657 §1, 2000)

#### **Sec. 2-4-17. Compensation.**

(a) The Mayor shall be compensated at the rate of six hundred fifty dollars (\$650.00) per month. Such rate shall apply only upon commencement of the Mayor's term of office following an election held on or after November 2, 1999, as provided by law.

(b) The Mayor Pro Tem shall be compensated at the rate of five hundred fifty dollars (\$550.00) per month. Such rate shall apply only upon commencement of the Mayor Pro Tem's term of office following an election held on or after November 2, 1999, as provided by law.

(c) Each Council member shall be compensated at the rate of five hundred twenty-five dollars (\$525.00) per month. Such rate shall apply only upon commencement of the term of office of a Council member whose position is subject to an election held on or after November 2, 1999, as provided by law. (Ord. 1599 §1, 1999)

#### **Sec. 2-4-20. Filling vacancies.**

(a) A vacancy occurring in the office of Mayor shall be filled as provided by the City Charter.

(b) Vacancies occurring in the Council shall be filled as provided by the City Charter. (Prior code §1-1002; Ord. 700, 1972; Ord. 1339 §2, 1989; Ord. 1710 §1, 2001)

#### **Sec. 2-4-25. Employment of relatives prohibited.**

(a) In that the employment of appointed or elected City officials almost always gives the appearance of a conflict of interest or supervisory relationship over employees, it shall be the policy of the City to prohibit all employment of relatives of appointed or elected City officials, including preexisting conditions.

(b) A relative of an appointed or elected City official is defined as spouse, child, stepchild, grandchild, son-in-law, daughter-in-law, parent, grandparent, brother, sister or persons residing in the same household, either on a permanent or temporary basis.

(c) An appointed official shall include City Manager, Assistant City Manager, Chief of Police and director positions. Elected officials shall include members of the City Council. (Ord. 1458 §1, 1994)

#### **Sec. 2-4-30. Regular meetings.**

The regular meetings of the City Council shall be held on the first and third Tuesdays of each month, commencing at 7:00 p.m., at the municipal building in the City, or at such other location as shall be designated by the City Council, and publicized by notice posted in a conspicuous place at the regular place of meeting. Except as provided herein, any regular Council meeting which has not adjourned at or before 11:00 p.m. shall be continued until 7:00 p.m. on the following evening. At the discretion of the City Council, any regular Council meeting may be extended beyond 11:00 p.m. for no more than two (2) additional fifteen-minute periods, upon motion duly made and seconded, and approved by a majority of the Council members present at the meeting. The first meeting following each regular municipal election shall be the organizational meeting. (Prior code §1-501; Ord. 838 §1(part), 1975; Ord. 1523 §1, 1997; Ord. 1710 §1, 2001)

#### **Sec. 2-4-40. Special meetings.**

Special meetings shall be called as provided by the City Charter or by ordinance not in conflict with the Charter. Any business which may lawfully come before a regular meeting may be transacted at a special meeting if all of the members of the Council present consent thereto, and all of the members absent file their written consent. (Prior code §1-502; Ord. 838 §1(part), 1975; Ord. 1710 §1, 2001)

#### **Sec. 2-4-50. Executive sessions.**

All regular and special meetings of the City Council shall be open to the public, except that upon the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the members, the City Council may hold an executive session. All executive sessions shall be convened and conducted in accordance with the Brighton Charter, this Section and applicable law, and only for the purposes authorized by law. A record shall be kept of the actual contents of executive session discussion, except that such record need not be verbatim. Said discussions shall be recorded in the same manner and media that the City Council uses to record the minutes of regular or special meetings, including by making any form of electronic recording of the discussions. No record shall be required to be kept of all or any portion of the discussion during an executive session that constitutes a privileged attorney-client communication. No formal or legally binding action by the Council for the City shall take place at an executive session, except that the Council may take formal action to review, amend and approve any written minutes of such session. (Prior code §1-503; Ord. 838 §1(part), 1975; Ord. 1706 §1, 2001)

#### **Sec. 2-4-60. Study sessions.**

The City Council may hold study sessions on the Monday of alternate weeks when no regular meeting is scheduled (usually the second and fourth Monday of each month), commencing at 6:00 p.m., at the municipal building of the City, or at such other time or location as shall be designated by the City Council, and publicized by notice posted in a conspicuous place at the regular place of meeting. Said study sessions shall be open to the public, and shall be considered special meetings only to the extent that the Council may hold an executive session as provided in Section 2-4-50 above. No formal or legally

binding action by the Council for the City shall take place at a study session. (Prior code §1-504; Ord. 838 §1(part), 1975; Ord. 1710 §1, 2001)

**Sec. 2-4-70. Minutes to be kept.**

The City Clerk shall keep minutes of the proceedings of each regular and special meeting of the City Council in the English language. All such minutes shall be administered and controlled pursuant to and in accordance with the City's Record Management Policy. The record of an executive session shall be retained by the City Attorney for not less than ninety (90) days following the date of the executive session, after which time the record may be immediately destroyed. If the City Attorney is the subject of the executive session, the Presiding Officer of the executive session shall designate who should retain the record for the ninety-day period. (Prior code §1-505(1); Ord. 838 §1(part), 1975; Ord. 1706 §1, 2001)

**Sec. 2-4-80. Rules of procedure.**

The current version of Robert's Rules of Order shall be used as rules of procedure for the conduct of the meetings of the City Council; provided, however, that said rules may be suspended by a majority vote of the entire Council in office at the time the vote is taken. (Prior code §1-505(2); Ord. 838 §1(part), 1975)

## **ARTICLE 2-8**

### **General Organization**

**Sec. 2-8-10. Plan adopted.**

The City Council recognizes and adopts the following as the organizational plan of the City. (Prior code §1-203(part); Ord. 828 §1(part), 1975; Ord. 1521 §1, 1997)

**Sec. 2-8-20. Boards and commissions designated.**

The Council may, by ordinance, establish, consolidate or abolish any board or commission, except that the Planning Commission, Board of Adjustment and Board of Appeals may not be abolished. The boards and commissions of the City shall include:

- (1) Planning Commission;
- (2) Board of Appeals;
- (3) Board of Adjustment;
- (4) Park and Recreation Advisory Board;
- (5) Brighton Housing Authority; and

(6) All boards or commissions as demanded and/or declared by statute for cities. (Prior code §1-203(1); Ord. 828 §1(part), 1975; Ord. 1521 §2, 1997; Ord. 1710 §2, 2001)

**Sec. 2-8-30. Duties of boards and commissions.**

(a) The duties of the boards and commissions designated in Section 2-8-20 shall be as prescribed by City ordinances and state statutes.

(b) Each member of any such board or commission shall take an oath of office to support the Constitution of the United States and the Constitution of the State and to faithfully perform his or her duties as a member of such board or commission prior to assuming his or her duties on such board or commission. (Ord. 971 §1, 1978)

**Sec. 2-8-40. Legal Department.**

The Legal Department of the City shall consist of a City Attorney and assistants. (Prior code §1-203(2); Ord. 828 §1(part), 1975)

**Sec. 2-8-50. Municipal Court.**

(a) The Municipal Court shall consist of a Municipal Judge, Deputy Municipal Judges and such administrative and other staff as deemed necessary by the City Council.

(b) All Municipal Court employees, except the Municipal Judge and Deputy Municipal Judges, shall be under the supervision, oversight and direction of the City Manager. (Prior code §1-203(3); Ord. 828 §1(part), 1975; Ord. 1710 §2, 2001; Ord. 1774 §1, 2003)

**Sec. 2-8-60. Legal Department and Municipal Court duties.**

(a) The duties of the Legal Department and of the Municipal Court shall be as prescribed by the City Charter and City ordinances not in conflict therewith.

(b) Each member of the Legal Department and the Municipal Judge and Deputy Judges shall take an oath of office to support the Constitution of the United States and the Constitution of the State and to faithfully perform the respective duties of the Legal Department and of the Municipal Judge and Deputy Judges prior to assuming the respective duties of the Legal Department and of the Municipal Judge and Deputy Judges. (Ord. 972 §1, 1978; Ord. 1710 §2, 2001)

**Sec. 2-8-70. General administrative organization.**

(a) The administrative organization of the City shall be divided into departments under the control of the City Manager. The City Manager is authorized to issue such administrative rules and regulations and to outline administrative procedures not in conflict with the laws of the state or ordinances of the City, as may become necessary for the adequate functioning of all departments.

(b) The City Manager, Assistant City Manager, department heads, commissioned police officers and reserve police officers shall take an oath of office to support the Constitution of the United States and the Constitution of the State and to faithfully perform their duties prior to assuming their respective offices with the City. (Ord. 973 §1, 1978)

**Sec. 2-8-80. Office of City Clerk and Department of Finance.**

(a) There is hereby established the office of the City Clerk. The City Clerk shall be ex officio City Treasurer and Clerk of the City Council. Subject to the supervision and control of the City Manager in all



matters, the City Clerk shall keep and supervise all accounts and have custody of all public monies of the City; apportion and collect special assessments; issue licenses; collect license fees; make and keep a journal of proceedings of the City Council; exercise custody of all public records of the City not specifically entrusted to any other officer; perform all the duties prescribed by the municipal election laws; cause the publication of all notices, unless otherwise provided by law; file and preserve all contracts to which the City is a party; and perform such other duties pertaining to such office as may be prescribed by law or assigned by the City Manager. In addition, the City Clerk shall, when so assigned by ordinance or the City Council, act as the licensing authority for the City, and in each instance where a bond is required, shall determine the sufficiency of the bond in reference to the governing ordinance.

(b) The Department of Finance shall be headed by the Director of Finance who shall assist the City Clerk in performance of his or her responsibilities as ex officio City Treasurer and shall, in association with the City Clerk, keep and supervise all accounts of the City; apportion and collect the revenues of the City; satisfy the financial obligations of the City; and manage and coordinate all fiscal affairs of the City.

(c) The Director of Finance shall act as purchasing officer of the City, shall assume oversight responsibility for the City's management information system and shall perform such other duties pertaining to such office as may be prescribed by law or assigned by the City Manager. (Ord. 1154, 1983; Ord. 1521 §4, 1997)

#### **Sec. 2-8-90. Police Department.**

The Police Department shall include commissioned police officers, clerical personnel and noncommissioned reserve officers who shall serve without pay. The Police Department shall be headed by a Chief of Police who shall be the commanding officer of the Department. He or she shall direct the police work of the City, and shall be responsible for the enforcement of law and order throughout the City. His or her work shall include control of investigations, records, traffic, crime prevention, all matters allied with police work and other duties as shall be prescribed by law or assigned by the City Manager. The Chief of Police shall provide adequate orientation training for new officers, as well as progressive training for all policemen. (Prior code §1-203(4)(b); Ord. 828 §1(part), 1975)

#### **Sec. 2-8-100. Fire fighting department.**

The City shall provide for the extinguishment of fire, the protection of health and property against fire and the removal of fire hazards through the creation of a Fire Fighting Department, by recognition of a special district duly organized under Title 32 of the Colorado Revised Statutes and authorized to provide said services, or by agreement with an entity specifically organized and authorized by law to provide fire fighting services to the City. The Fire Fighting Department, special district or other entity contractually obligated to provide fire fighting services to the City shall operate in the City in accordance with the ordinances of the City as passed by the City Council, and in accordance with agreements made by the City Council. (Prior code §1-203(4)(c); Ord. 828 §1(part), 1975; Ord. 1710 §2, 2001)

#### **Sec. 2-8-120. Department of Public Works.**

(a) The Department of Public Works shall be headed by the Director of Public Works, who shall supervise City engineering services, be in charge of the street division of the Department of Public Works and shall have responsibility for all engineering functions of the City and maintenance of all public rights-of-way in the City, as well as the maintenance of drainage structures and municipal parking areas throughout the City. In addition, the Director of Public Works shall be responsible for the efficient operation of the City garage and the housing, repair and servicing of all motor vehicles and the performance of such other duties as may be prescribed by law or assigned by the City Manager.

(b) The Director of Public Works shall also be responsible for the construction, operation and maintenance of the City's municipal water and sanitary sewer systems, and for the management of the construction of all public improvements within the City. (Ord. 1125 §1(part), 1983; Ord. 1521 §6, 1997)

**Sec. 2-8-130. Department of Community Development.**

(a) The Department of Community Development shall be headed by the Director of Community Development who shall be responsible for City planning and zoning services, zoning ordinances and community development activities in general. The Director of Community Development shall perform such duties as shall be prescribed by law or assigned by the City Manager.

(b) The Director of Community Development shall assume oversight responsibility of the Building Inspection Division, to be headed by the Chief Building Inspector. The Chief Building Inspector shall perform such duties as are prescribed by law or are assigned by the City Manager and/or the Director of Community Development, including, but not limited to, responsibility for all inspection services as may be required by building, plumbing, gas, electrical, mechanical and housing ordinances, as well as general City construction activities in order to ensure compliance with all applicable building codes and safety requirements for construction. (Ord. 1272, 1987; Ord. 1521 §7, 1997; Ord. 1710 §2, 2001)

**Sec. 2-8-150. Department of Parks and Recreation.**

(a) The Department of Parks and Recreation shall be headed by the Director of Parks and Recreation who shall be responsible for and shall supervise the operation and maintenance of the City recreation programs and the operation, maintenance, construction and landscaping of the City recreation facilities, parks, trails, open space and cemeteries.

(b) The Director of Parks and Recreation shall also be responsible for supervision of City senior and cultural facilities and services and for building maintenance. The Director of Parks and Recreation shall perform such other duties as are prescribed by law or assigned by the City Manager. (Ord. 1125 §1(part), 1983; Ord. 1521 §9, 1997; Ord. 1589, 1999; Ord. 1710 §2, 2001)

**ARTICLE 2-12**

**City Manager**

**Sec. 2-12-10. Powers and duties.**

The City Manager shall be the chief administrative officer of the City and shall have all the responsibilities and duties as well as the authority required to administer the City in accordance with law and the requirements of the City Council, and pursuant thereto, he or she shall have the following functions, powers and duties:

- (1) To be responsible for the efficient administration of all administrative departments of the City;
- (2) To be responsible for the enforcement of the ordinances, official directives, other laws of the City and those general laws of the state applicable to the City;

(3) To administer the personnel program of the City for all officers and employees in the administrative organization of the City, including the power and authority to hire, suspend, transfer and discharge City employees and officers in accordance with the personnel program of the City;

(4) To cause a proposed budget to be prepared annually and submitted to the City Council, and to be responsible for the administration of the budget after its adoption, all in accordance with law;

(5) To prepare and submit to the City Council complete reports on finances and administrative activities of the City and upon request of the City Council, make written or verbal reports at any time concerning the affairs of the City under his or her supervision;

(6) To keep the City Council advised of the financial condition and future needs of the City and make such recommendations to the City Council for adoption as may be necessary or expedient;

(7) To exercise supervision and control over the various City departments in the administrative organization of the City and recommend to the City Council any proposal he or she thinks advisable to establish, consolidate or abolish departments;

(8) To be responsible for the enforcement of all terms and conditions imposed in favor of the City in any contract or franchise, and upon knowledge of any violation thereof, report the same to the City Council for such action and proceedings as may be necessary to enforce the same;

(9) To attend City Council meetings and have the privilege to participate in discussions with the City Council in an advisory capacity without right to vote;

(10) To inform the public concerning plans and activities of the City Council and of the City administration;

(11) To be responsible for a system of accounting and auditing for the City which shall reflect, in accordance with generally accepted municipal accounting principles, the financial condition and financial operation of the City;

(12) To be responsible for engineering, architectural, maintenance and construction services as may be required by the City within the limitations of the City budget;

(13) To be responsible for contracting and purchasing, within the limitations of the budget, all supplies, materials, equipment and services required by any department, office or agency of the City;

(14) To exercise and perform all administrative functions of the City that are not specifically imposed by City ordinances or state statutes; and

(15) To perform other duties as may be prescribed by the City Charter and City ordinances or required of him or her by the City Council. (Prior code §1-206; Ord. 828 §1(part), 1975; Ord. 1589, 1999; Ord. 1710 §3, 2001)

## **ARTICLE 2-16**

### **Municipal Court**

#### **Sec. 2-16-10. Created.**

A Municipal Court of record for the City shall be and is created and established. The Municipal Court is vested with jurisdiction over matters arising under the City Charter and ordinances of the City. (Prior code §1-601(1); Ord. 830 §1(part), 1975; Ord. 1336 §1, 1989; Ord. 1710 §4, 2001)

#### **Sec. 2-16-15. Municipal Court record.**

The Municipal Court shall keep a verbatim record of the proceedings and evidence at trials by either electric devices or stenographic means. (Ord. 1336 §2, 1989)

#### **Sec. 2-16-20. Appointment of Municipal Judge.**

The Municipal Court shall be presided over by a Municipal Judge. The Council shall appoint, by affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the members in office at the time, a presiding Municipal Judge and such Deputy Municipal Judges as the Council deems necessary. (Prior code §1-601(2); Ord. 830 §1(part), 1975; Ord. 1589, 1999; Ord. 1710 §4, 2001)

#### **Sec. 2-16-30. Removal of Municipal Judge.**

The removal of any Municipal Judge during a term of office shall require a majority vote of all members of the Council. Any such removal shall be only for cause as specified in the state statutes applicable to the removal of municipal judges or for any other conduct which would constitute a violation of the Colorado Code of Judicial Conduct, as from time to time amended, if committed by a judge subject to such code. (Prior code §1-601(3); Ord. 830 §1(part), 1975; Ord. 1710 §4, 2001)

#### **Sec. 2-16-40. Qualifications of Municipal Judge.**

Each Municipal Judge shall be an attorney at law admitted to practice in the State and have at least five (5) years' experience in the active practice of law at the time of appointment. Each Municipal Judge shall be appointed for a two-year term. (Prior code §1-601(4); Ord. 830 §1(part), 1975; Ord. 1589, 1999; Ord. 1710 §4, 2001)

#### **Sec. 2-16-50. Oath of Municipal Judge.**

Before entering upon the duties of office of Municipal Judge or Deputy Judge, the Municipal Judge and Deputy Judges shall take and subscribe, before a person authorized to administer oaths in the State, an oath or affirmation that he or she will support the Constitutions of the United States and of the State and the ordinances of the City, and will faithfully perform the duties of his or her office. (Prior code §1-602(1); Ord. 830 §1(part), 1975; Ord. 1710 §4, 2001)

#### **Sec. 2-16-60. Assessment of court costs and jury fees.**

(a) The Municipal Judge is authorized to assess costs in addition to any fine imposed against any defendant who enters a plea of guilty or a plea of nolo contendere to a violation, or is found guilty of a violation, of this Code or of any ordinance of the City in an amount equal to forty-five dollars (\$45.00) in the event a jury is summoned and appears for trial.

(b) In any prosecution for a violation of this Code or any ordinance of the City based upon the complaint of any person other than a police officer or other employee of the City, the Municipal Judge shall assess costs of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) against such complaining witness if:

(1) The complaining witness who verified the complaint intentionally fails or refuses to testify at the time of trial;

(2) If the complaining witness who verified the complaint requests that the case be dismissed without trial and there was no reasonable basis, in the opinion of the Municipal Judge, for such complaint; or

(3) The complaint was maliciously filed. (Ord. 1297 §1, 1988; Ord. 1416 §1, 1992)

#### **Sec. 2-16-70. Probation.**

In sentencing or fining a violator of this Code or any ordinance of the City, the Municipal Judge shall not exceed the sentence or fine limitations established by the City. However, except where otherwise provided in this Code or any ordinance of the City for a specific violation thereof, the Municipal Judge may suspend the sentence or fine of any violator of this Code or any ordinance of the City and place him or her on probation for a period not to exceed one (1) year. (Ord. 1298 §1, 1988)

#### **Sec. 2-16-80. Failure of parent to obey court orders.**

(a) When a summons and complaint for a violation of this Code or the traffic code is filed against a person under the age of eighteen (18) years of age, the Municipal Court may send the juvenile's parent, guardian or legal custodian, by regular first class mail, a notice of the violation and an order that the parent, guardian or legal custodian appear with the juvenile at that court appearance and each court appearance scheduled thereafter. It shall be unlawful for a parent, guardian or legal custodian to fail to appear at that court appearance, with the person under eighteen (18) years of age, and at any further court appearance scheduled on that case. Violation of this Section may be punished as contempt of court for failure to obey a court order, or charged by summons and complaint.

(b) Whenever a person appears with his or her child or ward, and a plea or finding of guilty or contempt is entered, the Court may order the person and/or the child to:

(1) Cooperate in a presentence investigation as structured by the Court;

(2) Attend rehabilitation classes or counseling, such as parenting skills classes and anger management counseling;

(3) Perform useful public service to contribute to the rehabilitation of the child;

(4) Make restitution to the victim of the violation; or

(5) Pay any fines and court costs imposed.

Violation of this Section may be punished as contempt of court or failure to obey a court order.

(c) As punishment for a violation of these Subsections, the Court may impose a fine on the juvenile and/or parent, guardian or legal custodian of up to one thousand dollars (\$1,000.00) and/or incarceration up to one (1) year on the parent, guardian or legal custodian. (Ord. 1537, 1998)

## **ARTICLE 2-20**

### **Abandoned or Unclaimed Personal Property**

#### **Sec. 2-20-10. Chief of Police as custodian.**

The Chief of Police shall act as custodian of all lost, stolen, abandoned and confiscated property coming into possession of the police of the City. Nothing in this Article shall be held to require the Chief of Police to take possession of or make a disposition of any lost or stolen property, the disposition or possession of which is otherwise provided for in this Code or other ordinances of the City. (Ord. 1012 §1(part), 1979)

#### **Sec. 2-20-20. Recordkeeping duty of Chief of Police.**

It shall be the duty of the Chief of Police to keep a record of all property which may be seized or otherwise taken possession of by the Police Department. (Ord. 1012 §1(part), 1979)

#### **Sec. 2-20-30. Property held as evidence.**

The Chief of Police or a designee thereof shall keep in his or her custody all articles of personal property seized or held as evidence for use in any pending or prospective criminal prosecution, unless otherwise ordered by a court having jurisdiction or otherwise authorized by the prosecuting attorney of the subject court proceeding, until final disposition of any pending charges, including appeals or the lapse of time for filing an appeal. Thereafter, unless ordered to the contrary by the court having jurisdiction, the custodian or a designee thereof shall dispose of such property in accordance with the provisions of this Article hereinafter set forth. (Ord. 1012 §1(part), 1979; Ord. 1413, 1992)

#### **Sec. 2-20-40. City Manager custodian of other property.**

The City Manager shall act as custodian of all other lost, abandoned, unclaimed or confiscated property, whether tangible or intangible, now or hereafter in the possession or control of the City, including utility deposits, overpayments to the City, permit deposits, developer cost recovery agreements, monies unclaimed by beneficiaries in a pension fund, uncashed City checks, forfeiture of bonds, personal property and currency. The City Manager shall provide a suitable place for the safekeeping of abandoned/unclaimed tangible property and shall keep a record of abandoned/unclaimed intangible property. The disposition of intangible unclaimed property shall generally be the same as tangible property, as hereafter provided. (Ord. 1012 §1(part), 1979; Ord. 1413, 1992)

#### **Sec. 2-20-50. Disposition generally.**

All lost, stolen, confiscated or abandoned property that has been delivered to the custodian or one (1) of his or her subordinates for care, custody and control, not being held pending disposition of charges pursuant to Section 2-20-30 of this Article, shall be subject to disposition according to the provisions of this Article, unless otherwise ordered by any court of competent jurisdiction. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-60. Notification of owner.**

The custodian shall examine any such property, and if the identity of the owner appears from such examination or if the identity of the owner is readily available to the custodian from public records available to him or her, or otherwise known to him or her, the custodian shall notify the apparent owner by letter mailed by first class United States mail, postage prepaid, to the last known address of such apparent owner, describing the property and stating that the same is held by the custodian and may be sold or otherwise disposed of unless claimed within thirty (30) days of mailing of such notice. (Ord. 1012 §1(part), 1979; Ord. 1589, 1999)

**Sec. 2-20-70. Disposal of unclaimed property.**

If any such property remains unclaimed sixty (60) days after the same is no longer required to be held as evidence pursuant to Section 2-20-30 of this Article, or sixty (60) days after property not governed by Section 2-20-90 has come into possession of the custodian or sixty (60) days after the mailing of any letter of notice provided for in Section 2-20-60, such property shall be delivered to the City Manager for disposal pursuant to the provisions of this Article. (Ord. 1012 §1(part), 1979; Ord. 1589, 1999)

**Sec. 2-20-80. Failure to claim property.**

Failure to make claim of ownership within the time limits prescribed in this Article, and before sale or donation of any article, shall forever bar the owner or any person claiming ownership by, through or under the owner from making any subsequent claim of ownership. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-90. Exceptions generally.**

Notwithstanding the foregoing provisions of this Article, objects and articles of property described in Sections 2-20-100 and 2-20-110 of this Article may be kept, held or disposed of as provided in this Article. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-100. Firearms.**

(a) Unless ordered to the contrary by a court of competent jurisdiction, or otherwise required by law, firearms and other weapons which may not lawfully be kept, possessed or retained by the owner or person otherwise entitled to possession thereof, or which may not otherwise lawfully be returned to the owner thereof, or which are unclaimed after notice to the owner pursuant to Section 2-20-60 or the owner of which is not known, may be kept and retained by the Police Department for use in its training programs or otherwise disposed of pursuant to the provisions of Section 2-20-110 of this Article.

(b) Whenever such firearms or weapons are retained by the Police Department for use in its training programs or otherwise, such items shall be accounted for on the property records of the Police Department. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-110. Destruction of certain property.**

The City Manager may destroy each and every article of the following described property: burglary tools; firearms; cartridges; explosives; armor or bulletproof clothing; dangerous weapons; gambling apparatus; articles or medicines for the purpose of inducing abortion or preventing conception; beer, wine, spirituous liquors or fermented malt beverages; soiled, bloody or unsanitary clothing; solids or liquids of unknown or uncertain composition; drugs or hallucinogenic substances, hypodermic syringes and needles; obscene pictures, prints, effigies or statues; any poisonous or noxious solids or liquids; or any

other property which reasonably might result in injury to the health or safety of the public or be the subject of unlawful use. (Ord. 1012 §1(part), 1979; Ord. 1589, 1999)

**Sec. 2-20-120. Specific exceptions.**

Motor vehicles, lost or stray animals and other property that is required to be disposed of otherwise than as provided in this Article, by the terms of any law or ordinance, shall not be disposed of according to the terms of this Article. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-130. Contents of quarterly report.**

It shall be the duty of the Chief of Police to make a report to the City Manager on or before the last day of each quarter of each year, which report shall show all of the abandoned, stolen, lost and confiscated property which has come into his or her hands since the last report, and also all of such property which has been turned over to any person claiming the same, as owner, and to whom the same was delivered, and the date when the same was so turned over. The report shall also show the date when each and every article of property was received by the Chief of Police and shall also show whether or not any person has made claim to any of the property which has been turned over to him or her, and by whom such claim is made, and what article or articles he or she claims and when the claim was made. The report shall also show any property retained by the Police Department pursuant to Section 2-20-100 of this Article. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-140. Sale of unclaimed property; notice required.**

As soon as may be practical after the report referred to in Section 2-20-130 is received by the City Manager from the Chief of Police, the City Clerk shall prepare a notice for sale of unclaimed property as defined in Section 2-20-70 of this Article, unless otherwise excepted in Section 2-20-90, which notice shall be published in the official paper of the City on two (2) different occasions a week apart, and shall be directed to the public. Such notice shall list all such unclaimed property to be sold and which is then in the hands of the Chief of Police, and shall notify all persons who may have any claim of ownership or title to any of the property mentioned in the notice of their right to claim such property prior to the time fixed for the sale. The notice shall state a time and place where all such unclaimed property shall be sold by the City Manager. The time fixed in the notice for such sale shall not exceed fifteen (15) days nor less than five (5) days from the last publication of the notice. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-150. Sale of unclaimed property; City Manager authority.**

At the time and place mentioned in the notice, it shall be the duty of the City Manager to sell all such unclaimed property for the highest and best price the same will bring in cash, to receive from the purchaser of each and every article the amount paid by such purchaser for the same, and to deliver the article, together with a bill of sale for the same, to the purchaser. (Ord. 1012 §1(part), 1979)

**Sec. 2-20-160. Exceptions; right of finder.**

Notwithstanding any other provision of this Article, whenever any item of lost or abandoned property has been found and delivered to the custodian or one (1) of his or her subordinates for care, custody and control, such items shall be returned to the original finder whenever claim has been made by the finder and the following conditions have been met:

- (1) The claimant is a person who originally found the lost or abandoned property;



(2) The claimant, after surrendering the property to the custodian, has served written notice of his or her intention to make a claim on that item within sixty (60) days of surrender of the item;

(3) Lost or abandoned property has remained unclaimed by the owner or person having a right to the property for sixty (60) days after surrender of the same to the custodian;

(4) The lost or abandoned property is not stolen or confiscated property, property held under the provisions of Sections 2-20-90 through 2-20-120 or property held as evidence pursuant to Section 2-20-30. (Ord. 1012 §1(part), 1979; Ord. 1589, 1999)

#### **Sec. 2-20-170. Sale of perishable and certain other property.**

Notwithstanding any other provision of this Article, if any property seized or taken possession of by the Police Department is of a perishable nature or so bulky or of such nature as to make it dangerous or inadvisable to retain possession thereof for the length of time specified in this Article, the Chief of Police, upon certifying such fact to the City Manager, setting forth his or her reasons why such property should not be retained for the period fixed before selling the same, may, with the approval of the City Manager, cause such property to be forthwith advertised in the official newspaper, and sell such property at public sale at any time after three (3) days shall have elapsed from the seizure or taking possession thereof. (Ord. 1012 §1(part), 1979)

#### **Sec. 2-20-180. Report of sales and disposition of proceeds.**

The City Manager shall from time to time make reports to the City Council of sales provided for in this Article. Such reports shall give a description of articles sold and the amount of money received for articles, which money shall be placed in the general fund. (Ord. 1012 §1(part), 1979)

#### **Sec. 2-20-190. Disposition of unsold property.**

The City Manager is authorized to dispose of any and all property not sold at a public sale conducted as provided in this Article, at any time thereafter, at his or her discretion in the best interests of the City. (Ord. 1012 §1(part), 1979)

### **ARTICLE 2-24**

#### **Reserve Police Officers Unit**

##### **Sec. 2-24-10. Creation and membership.**

There is created a reserve officers unit. The members of such reserve officers unit shall be citizens of the State, and be of good moral character. The unit shall consist of not more than the number of persons from the City from time to time designated by the City Manager. The members of such unit shall be appointed by the City Manager or upon the recommendation of the Chief of Police. Each appointment shall be conditional on the appointee completing the training required by the City, regularly participating in the training program as determined by the City, and obeying all lawful orders. Each reserve officer shall be provided with appropriate identification as determined by the City Manager. It is unlawful for any reserve officer to wear or display any such identification as a reserve officer when he or she is not actively performing the duties for which he or she was appointed. (Ord. 590 §1(part), 1968; Ord. 1589, 1999)

**Sec. 2-24-20. Administrative command.**

The administrative command of the reserve officers unit shall be as follows: The reserve officers shall be under the direction of a reserve captain, a reserve lieutenant and a reserve sergeant. These officers, in turn, shall be directly responsible to the Chief of Police, the City Manager and, in case of disaster, the Mayor. (Ord. 590 §1(part), 1968)

**Sec. 2-24-30. Compensation.**

Each member of the reserve officers unit shall be designated a reserve officer and shall serve without pay. Reserve officers shall not be eligible to participate in the policemen's pension fund. Each officer, at the City's expense, shall be covered by workmen's compensation and by false-arrest insurance insuring both the City and the officer. (Ord. 590 §2, 1968)

**Sec. 2-24-40. Call to duty and direction; rules and regulations.**

In special cases of emergency, the Mayor, City Manager or Chief of Police is authorized to call into duty any or all of the reserve officers unit. When called into duty, such officers shall be under the direction of the Mayor, City Manager and other officers of the Police Department, as provided in the case of members of the Police Department, and shall be subject to all rules and regulations concerning such unit. (Ord. 590 §3, 1968)

**Sec. 2-24-50. Oath.**

Before becoming a member of the reserve officers unit, each officer shall take an oath to support the Constitution of the United States and the Constitution of the State and to faithfully perform his or her duties as such reserve officer. (Ord. 590 §4, 1968)

**Sec. 2-24-60. Resignation and removal.**

Any reserve officer may resign upon giving the City Manager forty-eight (48) hours' notice, in writing, of his or her intention to do so. The City Manager may remove any such officer at any time with or without cause. (Ord. 590 §5, 1968)

**Sec. 2-24-70. Powers and duties.**

The duties of the reserve officers unit shall be, when called into duty as provided by Section 2-24-40 of this Article, to suppress all riots, disturbances and breaches of the peace; to pursue and arrest any person fleeing from justice; to apprehend any and all persons in the act of committing any offense against the laws of the State or ordinances of the City; to forthwith bring such persons before the Municipal Court or other competent authority for examination; and to diligently and faithfully enforce all such laws, ordinances and regulations for the preservation of good order and public welfare as the City Council may order. For such purposes, they shall have all the powers of constables and members of the Police Department. They may, upon view, arrest any person who may be guilty of a breach of the ordinances of the City or of any crimes against the laws of the State or of the United States, and may, upon reasonable information, procure process for the arrest of any person who may be charged with a breach of any of the provisions or ordinances of the City or the laws of the State or the United States. (Ord. 590 §6, 1968; Ord. 1589, 1999)

**Sec. 2-24-80. Disobedience to rules or orders deemed misdemeanor.**

Any reserve officer who, while on duty, willfully disobeys any rule or regulation concerning such unit, or any proper order of the Mayor, City Manager or other person in authority over him or her, or any provision of this ordinance, shall be guilty of a misdemeanor. (Ord. 590 §7, 1968)

**ARTICLE 2-28**

**Health Department and Health Officer**

**Sec. 2-28-10. Appointment of Health Officer.**

The City Manager shall appoint a physician authorized to practice medicine in the State as the Health Officer for the City, who shall hold office at the pleasure of the City Manager. (Prior code §6-101; Ord. 846 §1(part), 1975)

**Sec. 2-28-20. Powers and privileges of Health Officer.**

The Health Officer shall possess all powers, privileges and immunities provided by law. (Prior code §6-104; Ord. 846 §1(part), 1975)

**Sec. 2-28-30. Coordination with Tri-County Health Department; enforcement.**

The Tri-County Health Department shall have full power and authority to enforce the health regulations of the State, County and City within the City. The Health Officer shall coordinate his or her functions as Health Officer with the Tri-County Health Department. (Prior code §6-102; Ord. 846 §1(part), 1975)

**ARTICLE 2-32**

**Park and Recreation Advisory Board**

**Sec. 2-32-10. Title.**

There has hereby been established in the City a Park and Recreation Advisory Board. This Article is adopted for the purpose of codifying the organization of the Park and Recreation Advisory Board. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-20. Purpose.**

The Board created under this Article shall study, investigate and advise the City Council as to any and all matters affecting the ownership and operation of the parks and recreation, vegetation and open space areas and all programs and facilities for the purpose of developing and promulgating policies, programs and services of the City insofar as such matters are within the responsibility and jurisdiction of the City Council. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-30. Powers and duties.**

The Park and Recreation Advisory Board shall have all the powers granted herein and shall perform all duties as provided herein. The Board shall adopt rules and regulations for the conduct and for defining the duties of its meetings, members, officers and committees. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-40. Membership.**

The Park and Recreation Advisory Board shall be composed of nine (9) voting members, all of whom shall reside in the City, except the school board member, who shall be appointed as follows:

- (1) Three (3) at-large members appointed by the Mayor with approval of the City Council;
- (2) One (1) member from each ward to be recommended by the Councilperson from that ward and appointed by the Mayor with approval of the City Council;
- (3) One (1) ex officio member and one (1) alternate ex officio member who shall be members of the City Council appointed by the City Council;
- (4) Two (2) alternates, not from the same ward, recommended by members of the City Council, appointed by the Mayor with approval of the City Council; and
- (5) One (1) Brighton School District 27J school board member. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-50. Terms of office.**

The terms of office for members of the Park and Recreation Advisory Board shall expire on January 31 and begin on February 1. The terms of office of the Park and Recreation Advisory Board shall be as follows:

- (1) The term of office for the members appointed from the City Council and school board, both voting and alternate members, shall be the same as their tenure in office.
- (2) The term of office for all other members, both voting and alternate members, shall be three (3) years. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-60. Appointment of Board.**

The members from the various wards shall be appointed by the Mayor with the advice and consent of the City Council. The first appointment of voting members to the Board shall be made upon the effective date of the ordinance codified in this Article. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-70. Staff representative.**

The City Manager shall appoint a staff representative who shall also serve as secretary to the Board as well as custodian of records. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-80. Organization and rules.**

At the first meeting in February, the Board shall elect a chairperson, vice chairperson and secretary from among its members, each of whose term shall be for one (1) year, with eligibility for reelection. The Board shall meet as necessary. It shall adopt such rules and regulations governing its procedures as it

may consider necessary or advisable, and shall keep a record of its proceedings, which record shall be a public record. The Board shall submit and approve operational bylaws. A quorum shall consist of a majority of the voting members. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-90. Absences/alternates.**

Any member of the Board who is unable to attend a meeting shall notify the chairperson, vice chairperson or City staff in advance of the meeting, stating the reason for his or her absence. Two (2) unexcused absences constitute the resignation of that member. Any member not present at the start of the meeting shall be considered absent and an alternate will be seated. In the case of absences of regular members, the alternates shall be seated in the following order: the alternate with seniority shall be seated first. If both alternates have served for the same amount of time, seating shall be by alphabetical order of the last names. All members and alternates in attendance may participate in the discussion. Only seated members may vote. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-100. Removal.**

Members, other than ex officio City Council and school board members, may be removed by the Mayor for inefficiency, neglect of duty or malfeasance in office, or the governing body may remove the member representing it for the same reasons. The Mayor or governing body, as the case may be, shall file a written statement of reasons for such removal. (Ord. 1538 §1(part), 1998)

**Sec. 2-32-110. Compensation and reimbursement for expenditure.**

Members of the Park and Recreation Advisory Board shall serve without compensation; provided, however, that each member may be reimbursed for any actual expenditure incurred by him or her in connection with his or her duties as a member of the Park and Recreation Advisory Board. (Ord. 1538 §1(part), 1998; Ord. 1589, 1999)

**Sec. 2-32-120. Vacancies.**

Any vacancy occurring on the Board shall be filled by appointment of a successor by the Mayor, with the advice and consent of the City Council, for the balance of the unexpired term of office. The person appointed must meet those qualifications required of the office to which he or she is appointed as set forth herein. (Ord. 1538 §1(part), 1998; Ord. 1589, 1999)

## **ARTICLE 2-36**

### **Planning Commission**

**Sec. 2-36-10. Planning generally.**

The City Council deems it necessary and expedient that the City plan the future physical development of the City. (Prior code §4-101)

**Sec. 2-36-20. Purpose designated.**

The City Council believes that City planning should be made for the general purposes of guiding and accomplishing a coordinated, adjusted and harmonious development of the City and its environs, which will, in accordance with future needs, best promote health, safety, morals, order, convenience, prosperity

and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other danger, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and adequate provision for public utilities and other public requirements. (Prior code §4-102)

**Sec. 2-36-30. Created; membership.**

There is created a Planning Commission for the City. The Planning Commission shall consist of seven (7) members residing in the City who shall be appointed as follows: There shall be two (2) ex officio members consisting of two (2) members of the City Council selected by the City Council, and five (5) persons appointed by the Mayor with the approval of the City Council. (Prior code §4-103; Ord. 750 §1, 1973)

**Sec. 2-36-40. Appointment.**

The City Council and the Mayor are directed to cause the members of the Planning Commission to be selected and appointed and the Planning Commission, upon its organization and adoption of its rules, shall proceed to function. (Prior code §4-106)

**Sec. 2-36-50. Term of office and compensation.**

The members of the Planning Commission shall serve in such capacity without compensation. The terms of office of the Planning Commission members shall be as follows:

- (1) The two (2) ex officio members' term shall correspond to their respective official tenure;
- (2) The first term of one (1) member shall be for two (2) years;
- (3) The first term of two (2) members shall be for four (4) years; and
- (4) The first term of two (2) members shall be for six (6) years.

Thereafter, the non-ex officio members shall be appointed for terms of six (6) years. (Prior code §4-104; Ord. 750 §2, 1973)

**Sec. 2-36-60. Powers and duties generally.**

The Planning Commission shall have all the powers granted and shall perform all the duties imposed by state statutes. (Prior code §4-105; Ord. 1589, 1999)

**Sec. 2-36-70. Zoning powers.**

The Planning Commission shall have all the power heretofore or hereafter by statute granted to the Zoning Commission. (Prior code §4-107)

## **ARTICLE 2-38**

### **Downtown Development Authority**

#### **Sec. 2-38-10. Establishment.**

There is hereby organized in the City a Downtown Development Authority, pursuant to state statute. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997; Ord. 1589, 1999)

#### **Sec. 2-38-20. Purpose.**

The City Council believes that the Downtown Development Authority should be made for the general purposes of creating and accomplishing a coordinated, adjusted and harmonious downtown for the City, which will be in accordance with future needs best promote health, safety, morals, order, convenience, prosperity and general welfare. (Ord. 1529 §1(part), 1997; Ord. 1589, 1999)

#### **Sec. 2-38-30. Powers and duties.**

(a) The board members, subject to the provisions of applicable law, shall have all powers customarily vested in the board of directors of a corporation. It shall exercise supervisory control over the activities of the directors and the staff of the authority in carrying out the functions authorized by law.

(b) The board members shall have all powers necessary or convenient to carry out and effectuate the purposes of the Downtown Development Authority, including, but not limited to, the following:

(1) Appoint and remove a director and other staff members, who shall be employed upon recommendation of the director, and prescribe their duties and fix their compensation which shall be paid from funds available to the Authority;

(2) At the request of the City Council, prepare an analysis of economic changes taking place in the central business district of the City;

(3) Study and analyze the impact of metropolitan growth upon the central business district;

(4) Plan and propose, within the downtown development district, public facilities and improvements of all kinds, including renovation, repair, remodeling, reconstruction or other changes in existing buildings which may be necessary or appropriate to the execution of any such plan which in the opinion of the Board will aid and improve the downtown development area;

(5) To implement as provided by law any plan of development, whether economic or physical, in the downtown development area as is necessary to carry out the functions of the Downtown Development Authority;

(6) In cooperation with the Planning Commission and the Planning Department of the City, develop long-range plans designed to halt the deterioration of property values in the central business district and to promote the economic growth of the district and take such steps as may be necessary to persuade property owners and business proprietors to implement such plans to the fullest extent possible;

(7) Retain and fix the compensation of legal counsel to advise the Board in the proper performance of its duties;

(8) Make and enter into all contracts necessary or incidental to the exercise of its powers and the performance of its duties;

(9) To acquire by purchase, lease, license, option, gift, grant, devise or otherwise any property or any interest therein;

(10) To improve land and to construct, reconstruct, equip, improve, maintain, repair and operate buildings and other improvements, whether on land of the authority or otherwise;

(11) To lease or sublease as lessor any property owned or leased by it or under its control on such terms and conditions as may be established by the Board;

(12) To cooperate with the City and any other governmental agency or other public body, and to enter into contracts with the City or any other governmental agency or body;

(13) To make to or receive from the City or County conveyances, leasehold interests, grants, contributions, loans and any other rights and privileges;

(14) To invest any funds of the Authority not required for immediate disbursement in property or securities in which public bodies may invest funds subject to their control, and to redeem any bonds it has issued at the redemption price established therein, or to purchase such bonds at less than the redemption price; all such bonds so redeemed or purchased shall be canceled;

(15) To deposit any funds not required for immediate disbursement in any depository authorized by statute; for the purpose of making such deposits, the Board may appoint, by written resolution, one (1) or more persons to act as custodians of the funds of the Authority; such persons shall give surety bonds in such amounts and form and for such purposes as the Board requires;

(16) To borrow money on such terms and conditions as the Board may approve and to issue bills, notes, bonds or other evidence of indebtedness therefor, and to pledge and hypothecate any property or revenue in support of any such debt;

(17) To sell or otherwise dispose of property of the Authority or any interest therein, subject to such covenants, conditions and restrictions as it may deem necessary or desirable to carry out the purposes and objectives of the Authority;

(18) To fix, charge and collect fees, rates, tolls, rents and charges for the use of any property of the Authority or any property under its control and to pledge any such revenues in support of any bonds or other obligations of the Authority. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

#### **Sec. 2-38-40. Membership.**

(a) The Downtown Development Authority Board shall consist of nine (9) members, and each appointed member, except any member from the City Council, shall reside, be a business lessee or own real property in the downtown development district. The voting members shall be appointed as follows:

(1) Seven (7) members appointed by the Mayor with the approval of the City Council; and

(2) Two (2) City Council members appointed by the Mayor with the approval of the City Council.



(b) An officer or director of a corporation having its place of business in the downtown development district shall be eligible for appointment to the Board. Before assuming the duties of office, each appointed member shall qualify by taking and subscribing to the oath of office required of members of the City Council. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-50. Terms of office.**

A member of the Board shall hold office until his or her successor has been appointed and qualifies. The terms of all members (except any member who is a member of the City Council) shall expire on January 31 and begin February 1. The terms of the City Council members shall correspond to their respective official tenure. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-60. Appointment of Board.**

The City Council is directed to cause the members of the Downtown Development Authority, upon its organization and adoption of its rules, to proceed to function. (Ord. 1529 §1(part), 1997)

**Sec. 2-38-70. Staff representation.**

The City Manager shall appoint a professional representative to provide for the efficient performance of the functions of the Downtown Development Authority. (Ord. 1529 §1(part), 1997)

**Sec. 2-38-80. Organization and rules.**

The Board shall elect a chairperson, vice chairperson and secretary/treasurer from among the Board members, each of whose term shall be for one (1) year. The Board shall meet as necessary. The Board shall adopt and promulgate rules governing its procedure, including election of its officers, and the rules shall be filed in the office of the City Clerk. The Board shall hold regular meetings in the manner provided in the rules of the Board. Special meetings may be held when called in the manner provided in the rules of the Board. All meetings of the Board shall be open to the public, except those dealing with land acquisition or sales, personnel matters or legal matters. The Board shall submit and approve operational bylaws. A quorum shall consist of four (4) members. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-90. Absences/alternates.**

Any member of the Downtown Development Authority Board who is unable to attend a meeting shall notify the chairperson, vice chairperson or professional representative in advance of the meeting, stating the reason for his or her absence. Two (2) unexcused absences can constitute the resignation of that member. (Ord. 1529 §1(part), 1997)

**Sec. 2-38-100. Removal.**

After notice and an opportunity to be heard, an appointed member of the Board may be removed for cause by the City Council. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-110. Compensation and reimbursement of expenditure.**

Members of the Downtown Development Authority shall serve without compensation; provided, however, that each member may be reimbursed for any actual expenditure incurred by him or her in

connection with his or her duties as a member of the Downtown Development Authority. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997; Ord. 1589, 1999)

**Sec. 2-38-120. Vacancies.**

Vacancies occurring other than through the expiration of term shall be filled for the remainder of the unexpired term, and shall be made by the City Council within thirty (30) days after occurrence of the vacancy. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-130. Funding and budget.**

(a) The Authority shall adopt a budget for each fiscal year, shall maintain accounts and shall cause an annual audit to be made pertaining to the fiscal affairs of the Authority. Administrative review of the proposed budget shall be in accordance with the policies of the City prior to submission of the proposed budget to the City Council for approval.

(b) The operations of the Authority shall be principally financed from the following sources and such other sources as may be approved by the City Council:

- (1) Donations to the Authority for the performance of its functions;
- (2) Proceeds of an ad valorem tax, not exceeding five (5) mills on the valuation for assessment of property in the downtown development area; or
- (3) Moneys borrowed and to be repaid from other funds received under the authority of this Article and applicable law. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**Sec. 2-38-140. Authorization of bonds.**

(a) By ordinance adopted by the City Council at a regular or special meeting by a vote of a majority of the members of the City Council, the City may issue bonds payable solely from revenues or from taxes pledged pursuant to statute on behalf of the downtown development district, or from both such revenues and taxes, to pay all or any part of the cost of any project of the downtown development district, or for furthering any purpose thereof.

(b) Any ordinance by which bonds are issued to pay all or any part of the cost of any project of the downtown development district or for furthering any purpose thereof shall specify the maximum net effective interest rate of such bonds. (Ord. 1067 §1(part), 1981; Ord. 1529 §1(part), 1997)

**ARTICLE 2-40**

**Housing Authority**

**Sec. 2-40-10. Organization of Housing Authority.**

There has heretofore been organized in the City a Housing Authority pursuant to state statutes, and this Article is adopted for the purpose of codifying the organization of the Housing Authority. (Ord. 1216 (part), 1986; Ord. 1589, 1999)

**Sec. 2-40-20. Board membership and term of office.**

(a) The affairs of the Housing Authority shall be under the supervision and control of Commissioners consisting of five (5) members appointed by the Mayor and ratified by the City Council.

(b) Subsequent to the initial appointment by the Mayor of the Commissioners, the Commissioners thereafter shall elect a chairman and vice-chairman.

(c) Not more than one (1) of such Commissioners may be a City official, and in the event that a City official is appointed as a Commissioner, acceptance or retention of such appointment shall not be deemed a forfeiture of office as a City official or incompatible therewith, or affect the tenure or compensation in any way. Furthermore, the term of office of a Commissioner who is a City official shall not be affected or curtailed by the expiration of the term of the City office.

(d) The Commissioners first appointed were designated to service for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, from the date of their appointment; and thereafter the term of office of each Commissioner shall be for five (5) years. A Commissioner shall hold office until his or her successor has been appointed and has qualified.

(e) Vacancies other than by reason of expiration of terms of office shall be filled for the unexpired term.

(f) Any member appointed as a Commissioner after the effective date of the ordinance codified in this Article shall be a resident of the City for a period of at least thirty (30) days preceding the date of appointment, and residency in the City, for members appointed after the effective date of the ordinance codified in this Article, shall be a prerequisite to continuing to serve as a Housing Authority Commissioner. (Ord. 1216 (part), 1986)

**Sec. 2-40-30. Compensation.**

No Commissioner shall receive compensation for services, but shall be reimbursed for actual necessary expenses incurred in the performance of official duties as a Commissioner. (Ord. 1216 (part), 1986)

**Sec. 2-40-40. Rules governing procedures.**

The Commission may adopt and promulgate rules governing its procedures, including election of its officers, and the rules shall be filed in the office of the City Clerk. The Commission shall hold such meetings as it determines are necessary for the conduct of its business. All meetings of the Commission shall be open to the public except those dealing with land acquisition, sales, personnel matters or legal matters. The rules of the Commission shall provide that three (3) Commissioners shall constitute a quorum. (Ord. 1216 (part), 1986)

**Sec. 2-40-50. Powers and duties generally.**

The Housing Authority shall have all the power granted and shall perform all the duties imposed by the state statutes. (Ord. 1216 (part), 1986; Ord. 1589, 1999)

**Sec. 2-40-60. Removal of Commissioner.**

Adverse actions against any Commissioner for inefficiency, neglect or misconduct in office shall comply with the requirements of the state statutes. (Ord. 1216 (part), 1986; Ord. 1589, 1999)

**ARTICLE 2-44**

**Cemetery**

**Sec. 2-44-10. Establishment and operation generally.**

The City owns and operates Elmwood Cemetery and Fairview Cemetery. The City Council has control of the operation of the cemeteries through the establishment of cemetery rules and regulations which shall cover, among other things, the sale and care of cemetery lots. Within the guidelines established by the rules and regulations, the Cemetery Sexton shall be responsible for supervision of the cemeteries, and the City Manager shall have the final administrative responsibility for management of the cemeteries. (Prior code §2-301; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-20. Perpetual care defined and provided.**

The City shall provide perpetual care for the Elmwood Cemetery and Fairview Cemetery. As used in this Article, the term *perpetual care* means the cutting and watering of the grass at reasonable intervals; the raking and cleaning of the lots; the general care and pruning of the trees and shrubs that may be placed along the walks, roadways and boundaries; and means and intends the general preservation of the lots and the grounds, walks, roadways, boundaries and structures to the end that the grounds shall remain and be reasonably cared for as cemetery grounds forever. *Perpetual care* does not include the maintenance, repair or replacement of any public mausoleum for which perpetual care has been paid to the City. (Prior code §2-302; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-30. Sale of lots and issuance of deeds.**

No lot or part of a lot in the Elmwood Cemetery or Fairview Cemetery shall hereafter be sold unless the purchaser thereof pays the fee for the purchase price thereof, and for the perpetual care thereof, as is provided in this Article. Upon the payment to the City of the purchase price of any lot and the sum charged for perpetual care, the City Clerk and the Cemetery Sexton shall execute and deliver proper deeds of conveyance therefor. Such deeds shall grant to the owner thereof the right to use such lots for burial of human remains only, subject to the rules and regulations of the City. The fee title to any lot or space conveyed shall remain in the City subject to the right of burial as provided for in this Article. (Prior code §2-303; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-40. Proceeds from sale of lots.**

All moneys received from the sale of cemetery lots shall be placed in the cemetery operating fund of the City. (Prior code §2-308; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

**Sec. 2-44-50. Cemetery plat and recordkeeping required.**

The City Manager shall cause the cemeteries to be laid out and platted into lots duly numbered. A cemetery book for each cemetery shall be kept by the Cemetery Sexton as a record of the lots. Thereafter, all transactions involving the transfer of ownership of the lots shall be duly kept and recorded in the

cemetery book. No transfer or assignment of any lot or interest therein shall be valid without the written consent of the City recorded in the records of the City. (Prior code §2-304; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-60. Perpetual care receipt and certificate.**

It shall be the duty of the City Clerk and Cemetery Sexton, in all cases where payment is made for perpetual care of lots, to issue a receipt therefor to the purchaser under the corporate seal of the City to the effect that in consideration of the payment made, the City assumes and agrees to provide perpetual care of the lot therein described. A permanent record shall be kept by the City Clerk and Cemetery Sexton of perpetual care cemetery lots. (Prior code §2-305; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-70. Notice of interment.**

At least ten (10) working hours' advance notice must be given to the Cemetery Sexton of the intention to bury the remains of any person in the Elmwood Cemetery or Fairview Cemetery. (Prior code §2-309; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-80. Contagion notice and disinterment restrictions.**

Special notice shall be given to the Cemetery Sexton of any person who dies of a contagious disease in order that suitable arrangements may be made for the safety of City employees and the public. Remains of a person dying of any contagious disease shall not be disinterred less than one (1) year after burial in the absence of an order of court with competent jurisdiction. (Prior code §2-310; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-90. Disinterment procedure.**

Notice must be given in advance to the Cemetery Sexton when arrangements are made for disinterment. Any disinterment shall be at such time as is arranged with the Cemetery Sexton. No disinterment shall be made except by the cemetery employees with consent of the legal representative of the deceased or order of court with competent jurisdiction. (Prior code §2-311; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-100. Location and size of graves.**

All graves shall be at least five (5) feet in depth, forty-eight (48) inches wide and ten (10) feet long. Each grave shall be required to have a vault with a minimum capacity of twenty-eight (28) days, and four thousand (4,000) psi. Each block shall contain no more than eight (8) grave sites. (Prior code §2-312; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

**Sec. 2-44-110. Care and control by City; exception.**

All grading and landscape work shall be performed by the City. All planting, trimming, cutting and removing of trees and shrubs shall be provided by the City. All opening and closing of graves and all interments and disinterments shall be performed by the City. If any tree, shrub or plant growing or standing upon any lot or walk shall, by means of its roots, branches or otherwise, become detrimental to adjacent lots or walks or interferes with the general design of the cemetery, the City shall have the right to remove or cut such trees, shrubs or plants. (Prior code §2-313; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-120. Decorations; City nonliability.**

The City is not liable for loss or damage to any decoration due to the elements, thieves, vandals or causes beyond the City's control. (Prior code §2-314; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

**Sec. 2-44-129. Definitions.**

For the purpose of distinguishing between a resident and nonresident for a fee schedule for the cemeteries in the City, a *resident* shall refer to the deceased, and be defined as residing within the corporate limits of the City as a primary place of residence at the time of death; or, having resided within the corporate limits immediately prior to being relocated outside the corporate limits necessitated by health or personal care requirements. (Ord. 1010 §1, 1979; Ord. 1710 §5, 2001)

**Sec. 2-44-130. Fees.**

The schedule of fees relating to Elmwood Cemetery and Fairview Cemetery shall be reviewed at such times as the City Council determines to be necessary and shall be set by resolution duly enacted by the City Council. (Ord. 1041 §1, 1980; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-140. Driving on lots prohibited.**

It is unlawful for any person to ride or drive, except on regularly laid out rights-of-way in the City cemeteries, any animal or vehicle upon, over or across the lands or lots of the City cemeteries or any part thereof. (Prior code §2-316; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-150. Entry prohibited; posting of hours.**

It is unlawful for any person to enter the grounds of the Elmwood Cemetery or Fairview Cemetery at any time except during the hours when the cemeteries are open to the public. In this regard, the hours of operation of the cemeteries shall be posted in a conspicuous place on the cemetery premises. (Prior code §2-317; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999; Ord. 1710 §5, 2001)

**Sec. 2-44-160. Destruction of property prohibited.**

It is unlawful for any person, not properly authorized, to destroy, mutilate, cut, remove, break or injure any trees, shrubs, plants or other ornament, or to tie any horse or other animal to the same, in any cemetery of the City; and it is likewise unlawful to destroy, cut, mutilate, remove, break, injure or deface any walks, sidewalks, fences, gateposts or other things used in or belonging to the cemeteries. (Prior code §2-318; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

**Sec. 2-44-170. Burial in approved cemeteries within City required.**

With the exception of ashes from cremation, the interment of any deceased person within the corporate limits of the City, except in platted and duly authorized cemeteries, is prohibited. (Prior code §2-319; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

**Sec. 2-44-180. Interment and disinterment not allowed when.**

No interment, interment services or disinterments shall be allowed on Sundays or any of the City-observed legal holidays, except for emergencies as determined by the City Manager. (Prior code §2-320; Ord. 853 §1(part), 1975; Ord. 1592 §1, 1999)

## **ARTICLE 2-48**

### **Office of Emergency Management**

#### **Sec. 2-48-10. Agency created and Director designated.**

There is created and established, as an agency under the City Council, the Office of Emergency Preparedness under the direction of a Director of Emergency Preparedness. The City Manager shall serve as the Director of Emergency Preparedness. (Prior code §1-801; Ord. 832 §1(part), 1975; Ord. 1384 §1(part), 1991; Ord. 1589, 1999)

## **ARTICLE 2-52**

### **Officers' Bonds**

#### **Sec. 2-52-10. City Manager's bond.**

The City Manager shall be under bond in the amount of fifty thousand dollars (\$50,000.00) with corporate surety duly licensed to do business in the State conditioned upon his or her faithful performance of duty and compliance with the governing laws of the City, the County, the State and the United States government. (Prior code §1-207(l); Ord. 782A §1(part), 1974)

#### **Sec. 2-52-20. City Clerk-Treasurer's bond.**

The City Clerk-Treasurer shall be under bond in the amount of twenty-five thousand dollars (\$25,000.00) with corporate surety duly licensed to do business in the State, conditioned upon his or her faithful performance of duty and compliance with the governing laws of the City, the County, the State and the United States government. (Prior code §1-207(2); Ord. 782A §1(part), 1974)

#### **Sec. 2-52-30. Premiums paid by City.**

The premiums for the bonds required by Sections 2-52-10 and 2-52-20 of this Code shall be paid by the City. (Prior code §1-207 (3); Ord. 782A §1(part), 1974)

#### **Sec. 2-52-40. Municipal Judge's bond.**

In addition to the oath required by Section 2-16-50 of this Code, the Municipal Judge shall give an official bond in the sum of five thousand dollars (\$5,000.00) with good and sufficient surety conditioned, among other things, for the faithful performance of each and all of his or her duties and the accounting for all moneys and property coming into his or her hands and the prompt and faithful payment of all moneys and deliverance to his or her successor in office of all property and moneys coming into his or her custody, possession or control belonging to the City. (Prior code §1-602(2); Ord. 830 §1part), 1975)

## **ARTICLE 2-56**

### **Officers' Salaries**

#### **Sec. 2-56-10. Salaries determined by annual budget.**

The salaries of all officers and employees of the City shall be as provided annually in the annual budget. (Ord. 829 §1, 1975; Ord. 1599 §2, 1999)

## **ARTICLE 2-64**

### **Employees' Pension Plan and Trust Agreement**

#### *Division 1.*

#### *Name and Purpose of Plan and Trust*

#### **Sec. 2-64-10. Title and intent.**

The City does hereby restate its qualified deferred money purchase pension plan known as the City of Brighton Employees' Pension Plan. The plan is created for the exclusive benefit of the City's eligible employees who qualify as participants and their beneficiaries. The plan is intended to qualify under Section 401(A) of the Internal Revenue Code, the trust created pursuant to the plan is intended to be exempt under Section 501(A) of such Code, and all provisions of this plan shall be constructed in accordance with this intention. (Ord. 1184 Art. 1, 1985; Ord. 1589, 1999)

#### *Division 2. Contributions by City, State and Participants*

#### **Sec. 2-64-50. Determination of contribution by City.**

The City shall contribute and pay into the trust fund monthly, or more frequently as the City may determine, to the credit of each employee's account, an amount equal to nine percent (9%) of the employee's compensation. (Ord. 1184 Art. 4 §4.1, 1985; Ord. 1710 §6, 2001)

#### **Sec. 2-64-60. Time and method of payment of contribution by City.**

The contribution of the City for any month shall be paid in cash to the trustee within ten (10) days following the end of the pay date. (Ord. 1184 Art. 4 §4.2, 1985; Ord. 1710 §6, 2001)

#### **Sec. 2-64-70. Contributions by participants.**

(a) **Mandatory contributions.** Each employee must contribute to the trust fund nine percent (9%) of his or her compensation for each month. Each regular full-time and part-time employee of the City who is eligible to participate in this plan, as a condition to his or her employment, shall be deemed to have authorized the City to make a payroll deduction of such amount from each of his or her paychecks and to transmit such amount directly to the trustee.

(b) **Voluntary contributions.** In addition to the mandatory contributions required in Subparagraph (a), each participant may contribute to the trust fund on a voluntary basis such amount as he or she may elect, subject to the regulations and restrictions in the plan. No participant shall have any obligation to make any voluntary contribution.



(c) The City shall pay all amounts contributed by participants to the trustee as soon as is reasonably convenient and in no event less often than monthly. (Ord. 1184 Art. 4 §4.3, 1985; Ord. 1589, 1999; Ord. 1710 §6, 2001)

**Sec. 2-64-80. City's obligations.**

(a) The adoption and continuance of the plan shall not be deemed to constitute a contract between the City and any employee or participant, nor to be a consideration for, or an inducement or condition of, the employment of that person. Nothing herein contained shall be deemed to give any employee or participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or participant at any time, nor shall it be deemed to give the City the right to require the employee or participant to remain in its employ, nor shall it interfere with the right of any employee or participant to terminate his or her employment at any time.

(b) The City shall not incur any liability whatsoever to the trust fund, any participants or their beneficiaries, the trustee or any other person, for anything done or omitted by the trustee, or for the loss or depreciation in whole or in part of the trust fund. (Ord. 1184 Art. 4 §4.4, 1985)

*Division 3. Determination and Vesting of Participants' Interests*

**Sec. 2-64-110. Vesting of participants' interests.**

(a) A participant's interest in the contributions made by him or her and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(b) The interest of a participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be vested at the rate of thirty-three and one-third percent (33⅓%) for each twelve (12) months a participant is employed by the City. An employee will be fully vested at the end of three (3) years of service. If any employee leaves service prior to three (3) years, then the employee will receive a pro-rata share of the contributions made by the City based on the number of years of service with the City.

(c) Any interest in the trust fund shall be and become payable to a participant or his or her beneficiaries only as and to the extent provided in this plan; and a participant or former participant who dies having designated a beneficiary shall cease to have any interest hereunder or in his or her separate trust account; and his or her beneficiary shall become entitled to distribution thereof as provided in this Article by virtue of the terms of this plan and not as a result of any transfer of said interest or account. (Ord. 1184 Art. 5 §5.2, 1985; Ord. 1710 §6, 2001)

**Sec. 2-64-130. Vesting upon termination of plan or discontinuance of contributions.**

Notwithstanding the provisions of Sections 2-64-110 and 2-64-120, upon the termination of the plan or upon the complete discontinuance of contributions under the plan to the trust, the interests of all participants shall become fully and completely vested for all purposes. (Ord. 1184 Art. 5 §5.4, 1985)

*Division 4. Retirement Date; Designation of Beneficiary*

**Sec. 2-64-140. Retirement age.**

The normal retirement age for each participant shall be sixty-five (65), and on the last day of the month in which his or her seventieth birthday occurs, he or she may retire. Until actual retirement, a participant shall continue to participate in the plan. (Ord. 1184 Art. 6 §6.1, 1985; Ord. 1589, 1999)

**Sec. 2-64-150. Designation of beneficiary.**

Each participant shall have the right to designate a beneficiary or beneficiaries to receive his or her interest in the trust fund upon his or her death. If a participant shall fail to designate a beneficiary before his or her death, or if no designated beneficiary survives the participant, the proceeds thereof shall be held until a personal representative is appointed by order of court. (Ord. 1184 Art. 6 §6.2, 1985; Ord. 1710 §6, 2001)

*Division 5. Distribution From Trust Fund*

**Sec. 2-64-160. When interests become distributable and effect thereof.**

When a participant dies, suffers total disability, retires or terminates his or her employment for any other reason, his or her interest in the trust fund shall thereupon become distributable as hereinafter provided in the plan. (Ord. 1184 Art. 7 §7.1, 1985; Ord. 1710 §6, 2001)

*Division 6. Administration Board*

**Sec. 2-64-260. Appointment.**

The Administration Board shall consist of five (5) members; one (1) shall be the currently acting City Treasurer, one (1) shall be appointed by the City Manager to serve at his or her pleasure, and three (3) shall be participants elected by the participating employees. The three (3) to be elected shall be elected for three-year staggered terms, with the term of one (1) such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the City Treasurer. After the first year, the election procedures shall be established by the Board. (Ord. 1184 Art. 8 §8.1, 1985)

**Sec. 2-64-270. Duties and powers.**

(a) The Board shall be charged with the administration of this plan and trust and shall decide all questions arising in the administration, interpretation and application of the plan and trust agreement, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(b) The Board shall, from time to time, direct the trustee concerning the payments to be made out of the trust fund pursuant to this plan. The Board shall also have the power to direct the trustee with respect to all investments and reinvestments of the trust fund, and shall have such other powers respecting the administration of the trust fund as may be conferred upon it hereunder. The Board may employ for the trust fund an investment advisor and may rely on such advisor's recommendation with respect to the investment of all or a portion of the trust fund. If the Board shall employ an investment advisor, it shall

execute any letters or agreements necessary for the employment of such advisor, or it may direct the trustee to execute any such letters or agreement. The fees of such investment advisor shall be paid from the trust fund as an expense of the trust. The trustee shall be fully protected from any action of such investment advisor and shall not be liable to any person or organization for any investments made by such advisor or for any acts or omissions made upon the direction or recommendation of such advisor.

(c) The Board shall have the power to direct the trustee to enter into such contracts as are determined by the Board for the investment of the trust funds, and any such contract shall then become a part of this plan and trust and all other provisions of this plan and trust and particularly the provisions of Division 5 relating to the allocation of earnings and losses. The provisions of Division 9, relating to the trustee, shall be construed accordingly. The Board shall have the further power to direct the trustee to terminate such contract at any time subject to the provisions of such contract. (Ord. 1184 Art. 8 §8.2, 1985)

#### **Sec. 2-64-280. Organization and operation.**

The Board may adopt such procedures as it deems necessary for the conduct of its affairs, appoint one (1) of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the plan and settlement of disputes shall be determined by the Board. Any determination of the Board shall be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and conclusive on the City, the trustee, all participants and beneficiaries claiming any rights hereunder, and as to all third parties dealing with the Board or with the trustee. All notices, directions, information and other communications from the Board to the trustee shall be in writing. (Ord. 1184 Art. 8 §8.3, 1985)

#### **Sec. 2-64-290. Matters affecting Board members.**

In any matter affecting any member of the Board in his or her individual capacity as a participant hereunder, separate and apart from his or her status as a member of the group of participants, such interested member shall have no authority or vote in the determination of such matter as a member of the Board, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this provision shall not be deemed to take from said interested member any of his or her rights hereunder as a participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the City Manager shall appoint a temporary member of the Board in order to create an odd number of voting members. (Ord. 1184 Art. 8 §8.4, 1985)

#### **Sec. 2-64-300. Compensation and expenses.**

The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of the Board. Such reimbursement and the compensation of all agents, counsel or other persons retained or employed by the Board shall be fixed by the Board, and shall be paid from the trust fund or in the discretion of the City Manager, by the City. (Ord. 1184 Art. 8 §8.5, 1985)

#### **Sec. 2-64-310. Records.**

The Board shall keep track of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this plan and trust and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective participants in the trust fund, and the amount of all benefits hereunder. As a part thereof, it shall maintain or cause to be maintained separate accounts for each participant as provided for in Section 2-64-100(c). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of any action taken or resolution adopted by the Board. (Ord. 1184 Art. 8 §8 .6, 1985)

#### **Sec. 2-64-320. Immunity from liability.**

No bond or other security shall be required of any member of the Board except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for his or her own gross negligence or willful misconduct. (Ord. 1184 Art. 8 §8.7, 1985)

#### **Sec. 2-64-330. Resignation and removal of members; appointment of successors.**

(a) Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise upon receipt of such notice.

(b) Upon the death, resignation or removal of any elected board member, a successor to complete his or her term shall be elected within ninety (90) days in the manner set forth in Section 2-64-260 of this Article. (Ord. 1184 Art. 8 §8.8, 1985)

#### **Sec. 2-64-340. Authorization of loans to participants.**

(a) Availability of loans. The City may permit participant loans at its option which shall be communicated to participants in writing if loans are permitted. Any such loan shall be made at the request of the participant and shall be subject to the requirements set forth in the qualified deferred money purchase pension plan loan guidelines. To the extent loans are made available, such loans shall be available to all participants on a reasonably equivalent and nondiscriminatory basis.

(b) Limitations on amount of loans. Any loan, when combined with the principal balance due on all other loans made to the participant by any retirement plan maintained by the employer, shall not exceed the lesser of fifty thousand dollars (\$50,000.00), or fifty percent (50%) of such participant's vested account balance. Notwithstanding the foregoing, any participant shall be permitted to borrow from his or her vested interest an amount which, when combined with the principal balance due on all other loans to the participant from any retirement plan maintained by the employer, does not exceed ten thousand dollars (\$10,000.00).

(c) Repayment of loans. Any loan shall be repaid within five (5) years unless such loan is for the purpose of the purchase, construction or reconstruction of a principal residence for the participant or a member of the participant's family. Such a loan for a residence must be repaid over no more than ten (10) years.

(d) Interest rate. Participant loans shall bear a reasonable rate of interest. (Ord. 1184 Art. 8 §8.9, 1985; Ord. 1710 §6, 2001)

*Division 7. Powers and Duties of Trustee*

**Sec. 2-64-410. Records and accounts.**

The trustee shall keep all records and accounts which may be necessary in the administration and conduct of this trust. (Ord. 1184 Art. 9 §9.6, 1985; Ord. 1710 §6, 2001)

*Division 8. Continuance, Termination and Amendment of Plan and Trust*

**Sec. 2-64-430. Continuance of plan not contractual obligation of City.**

It is the expectation of the City that it will continue the plan indefinitely but the continuance of the plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue this plan at any time. The discontinuance of this plan by the City shall, in no event, have the effect of revesting any part of the trust fund in the City. (Ord. 1184 Art. 10 §10.1, 1985)

**Sec. 2-64-440. Termination of trust.**

This trust created under this Article is irrevocable and shall continue in full force and effect for such time as may be necessary to accomplish the purpose for which it is created, unless sooner termination and discontinued by the City by action or its City Council. Notice of such termination shall be given to the trustee by an instrument in writing, executed by the City Manager pursuant to the action of the City Council. (Ord. 1184 Art. 10 §10.2, 1985)

**Sec. 2-64-450. Distribution of trust fund on termination of plan.**

If the plan shall, at any time, be terminated by the terms of this Division, the trustee shall immediately convert the entire trust fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective participant or beneficiary in the trust fund shall be vested in its entirety as of the date of the termination of the plan. The trustee shall, as soon as possible, distribute to each participant or beneficiary outright his or her entire interest in the trust fund. (Ord. 1184 Art. 10 §10.3, 1985)

**Sec. 2-64-460. Amendments to plan and trust agreement.**

(a) The City, by action of its City Council, may at any time, from time to time, amend this plan and trust agreement; provided, however, that no such amendment shall be made at any time pursuant to which the trust fund may be diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries; and provided further that no amendment shall decrease the percentage of the interest of any participant which shall theretofore have become vested; nor shall any amendment discriminate in favor of employees who are officers, persons whose principal duties consist of supervising the work of other employees or highly compensated employees.

(b) Notwithstanding anything herein to the contrary, however, the plan and trust agreement may be amended at any time from time to time, if necessary, to conform to the provisions and requirements of the Internal Revenue Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any participant or beneficiary hereunder. (Ord. 1184 Art. 10 §10.4, 1985)

*Division 9. Miscellaneous*

**Sec. 2-64-470. Benefits to be provided solely from trust fund.**

All benefits payable under this plan shall be paid or provided for solely from the trust fund, and the City assumes no liability or responsibility therefor. (Ord. 1184 Art. 11 §11.1, 1985)

**Sec. 2-64-480. Notices from participants to be filed with Board.**

Whenever provision is made herein that a participant may exercise any option or election or designate any beneficiary, the action of each participant shall be evidenced by a written notice thereof, signed by the participant on a form, if any, furnished by the Board for such purpose and filed with the Board, which shall not be effective until received by the Board. (Ord. 1184 Art. 11 §11.2, 1985)

**Sec. 2-64-490. Text to control.**

The headings of articles and sections are included solely for convenience of reference. If there is any conflict between such headings and the text of this plan and trust, the text shall control. (Ord. 1184 Art. 11 §11.3, 1985)

**Sec. 2-64-500. Law governing and severability.**

(a) This plan and trust agreement shall be construed, regulated and administered under the laws of the State, and the trustee shall be liable to account only in the courts of the State. All contributions received by the trustee hereunder shall be deemed to have been received in the State.

(b) In the event any provision of this Article or plan or trust agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof. On the contrary, such remaining provisions shall be fully severable and this plan and trust agreement shall be construed and enforced as if said illegal or invalid provisions had never been inserted in this Article. (Ord. 1184 Art. 11 §11.4, 1985)

**Sec. 2-64-510. Plan for exclusive benefit of participants; reversion prohibited.**

This plan and trust agreement has been entered into for the exclusive benefit of the participants and their beneficiaries. Under no circumstances shall any funds contributed to or held by the trustee hereunder at any time revert to or be used by or enjoyed by the City, nor shall any such funds or assets at any time be used other than for the exclusive benefit of the participants or their beneficiaries. (Ord. 1184 Art. 11 §11.5, 1985)

**ARTICLE 2-65**

**Liquor Licensing Authority**

**Sec. 2-65-10. Liquor Licensing Authority established.**

There is hereby established a Liquor Licensing Authority, which shall have and is vested with the authority to grant and refuse licenses and special permits, approve and deny applications for renewal and transfer of licenses for the sale at retail of malt, vinuous or spirituous liquors and fermented malt beverages, designate and assess fees, promulgate reasonable rules and regulations, conduct investigations and suspend or revoke such licenses for cause, all in the manner provided by law. The Liquor Licensing

Authority shall have all the powers of the licensing authority set forth in Articles 46, 47 and 48 of Title 12, C.R.S. (Ord. 1773 §1, 2003)

**Sec. 2-65-20. Membership; terms of office; officers.**

(a) The Liquor Licensing Authority of the City shall consist of five (5) voting members: one (1) from each of the four (4) Council wards of the City and one (1) at-large position; and one (1) alternate from any ward. Each member of the Authority shall be a qualified elector and at least twenty-one (21) years of age on the date of appointment. If there are no applicants for any of the four (4) ward positions, or if none of the applicants is deemed qualified to serve in that position, the vacant ward position may be filled by any qualified applicant, regardless of ward. All members and alternates of the authority shall be appointed by the Mayor and City Council for four-year terms.

(b) The length of term for the first Liquor Licensing Authority members shall be determined by lot. Except in the event that a member is appointed to fill a vacancy as provided in Subsection 2-65-50(b), all subsequent appointments shall be for four-year terms.

(c) No person shall serve or continue to serve as a member of the Liquor Licensing Authority who has or obtains any financial interest, including employment, in the operation of any business which is issued a license relating to fermented malt beverages or alcoholic beverages pursuant to Articles 46, 47 and 48 of Title 12, C.R.S., or who has a member of his or her immediate family who has or subsequently obtains such an interest or employment in any such business in the City.

(d) No person shall serve or continue to serve as a member of the Liquor Licensing Authority who is or becomes a member of the City Council, except during any period of time during which the City Council is acting in the role of the Liquor Licensing Authority as provided in Subsection 2-65-50(b) below.

(e) No person shall be eligible for appointment or continue to serve as a member of the Liquor Licensing Authority who has been convicted within the seven (7) years preceding such appointment of driving under the influence of alcohol or drugs, driving while impaired by the influence of alcohol or drugs, or any alcohol- or drug-related offense, or any violation of Articles 46, 47 or 48 of Title 12, C.R.S. The Police Department shall conduct a criminal record background check on all Liquor Licensing Authority appointees.

(f) The Liquor Licensing Authority shall annually elect a chair from its membership. The chair, or person serving on the Liquor Licensing Authority designated by the chair to serve as acting chair in the chair's absence, shall preside over all hearings and proceedings of the Authority. (Ord. 1773 §1, 2003; Ord. 1779 §1, 2003)

**Sec. 2-65-30. Appointment.**

The Mayor and the City Council are directed to cause the members of the Liquor Licensing Authority to be selected and appointed, and the Liquor Licensing Authority, upon its organization and adoption of its rules, shall proceed to function. (Ord. 1773 §1, 2003)

**Sec. 2-65-40. Removal.**

Any member of the Liquor Licensing Authority may be removed for cause by a majority vote of the entire City Council. (Ord. 1773 §1, 2003)

**Sec. 2-65-50. Vacancies.**

(a) Any vacancy occurring in the Liquor Licensing Authority for any reason shall be filled for the unexpired term by the City Council in accordance with City Council policies for filling positions on boards and commissions.

(b) In the event three (3) vacancies exist simultaneously on the Liquor Licensing Authority, and there are matters scheduled for consideration before the Liquor Licensing Authority, the City Council shall act as the Liquor Licensing Authority until a quorum of the Liquor Licensing Authority is reconstituted by filling the vacancies in accordance with this Section. (Ord. 1773 §1, 2003)

**Sec. 2-65-60. Training.**

Before becoming a voting member of the Liquor Licensing Authority, each member of the Liquor Licensing Authority must complete a course or class of training, approved by the City, in the laws and regulations governing alcohol beverage sales. (Ord. 1773 §1, 2003)

**Sec. 2-65-70. Rules of procedure.**

The Liquor Licensing Authority shall establish its Rules of Procedure (Rules) regulating the conduct of its meetings, which Rules shall be approved by the City Council. The Liquor Licensing Authority may make recommendations to the City Council for changes in its Rules. (Ord. 1773 §1, 2003)

**Sec. 2-65-80. Staff representation.**

The City Attorney and the office of the City Clerk shall act in an advisory capacity to the Liquor Licensing Authority. (Ord. 1773 §1, 2003)

**Sec. 2-65-90. Compensation and reimbursement of expenditure.**

Members of the Liquor Licensing Authority shall receive no compensation for their service; however, any necessary expenditure incurred in the performance of their duties shall be reimbursed by the City as determined by the City Council as part of the annual budget process. (Ord. 1773 §1, 2003)

**Sec. 2-65-100. Quorum appeal.**

(a) A quorum of the Liquor Licensing Authority shall consist of three (3) members, and a decision of a majority of the quorum present shall control.

(b) All decisions of the Liquor Licensing Authority are final, subject only to appeal to a court of competent jurisdiction. (Ord. 1773 §1, 2003)

**Sec. 2-65-110. Exercise of police power.**

The City Council declares that the provisions contained in this Section are an exercise of the police power of the City for the protection of the economic and social welfare and the health, safety, peace and morals of the citizens and residents of the City, as authorized by and pursuant to the authority granted under Article XX of the State Constitution and the provisions of the Colorado Liquor and Beer Codes, as amended. (Ord. 1773 §1, 2003)